

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF AMENDMENT AND
17.36.802 and 17.38.106 pertaining to)	ADOPTION
subdivision and public water and)	
wastewater review fees, and New Rule)	(SUBDIVISIONS)
I pertaining to certification under 76-4-)	(PUBLIC WATER AND SEWAGE
127, MCA)	SYSTEM REQUIREMENTS)

TO: All Concerned Persons

1. On August 23, 2019, the Board of Environmental Review (board) and Department of Environmental Quality (department) published MAR Notice No. 17-405, pertaining to the public hearing on the proposed amendment and adoption of the above-stated rules at page 1228 of the 2019 Montana Administrative Register, Issue No. 16.

2. The board has amended ARM 17.38.106 as proposed but with the following changes from the original proposal, stricken matter interlined and new matter underlined:

17.38.106 FEES (1) remains as proposed.

(2) Department review will not be initiated until fees calculated under (2)(a) through (f) and (5) have been received by the department. If applicable, the final approval will not be issued until the calculated fees under (3) and (4) have been paid in full. The total fee for the review of a set of plans and specifications is the sum of the fees for the applicable parts or subparts listed in these subsections:

(a) The fee schedule for designs requiring review for compliance with Department Circular DEQ-1 is set forth in Schedule I, as follows:

SCHEDULE I

Policies	
ultra violet disinfection	\$ 4,000 <u>875</u>
point-of-use/point-of-entry treatment	\$ 4,000 <u>875</u>
Section 1.0 Engineering Report	\$ 400 <u>350</u>
Section 3.1 Surface water	
quality and quantity	\$ 4,000 <u>875</u>
structures	\$ 4,000 <u>875</u>
Section 3.2 Ground water	\$ 4,200 <u>1,050</u>
Section 4.1 Microscreening	\$ 400 <u>350</u>
Section 4.2 Clarification	
standard clarification	\$ 4,000 <u>875</u>
solid contact units	\$ 2,000 <u>1,750</u>
Section 4.3 Filtration	

rapid rate	\$ 2,500 <u>2,190</u>
pressure filtration	\$ 2,000 <u>1,750</u>
diatomaceous earth	\$ 2,000 <u>1,750</u>
slow sand	\$ 2,000 <u>1,750</u>
direct filtration	\$ 2,000 <u>1,750</u>
biologically active filtration	\$ 2,000 <u>1,750</u>
membrane filtration	\$ 2,000 <u>1,750</u>
micro and ultra filtration	\$ 2,000 <u>1,750</u>
bag and cartridge filtration	\$ 600 <u>520</u>
Section 4.4 Disinfection	\$ 1,000 <u>875</u>
Section 4.5 Softening	\$ 1,000 <u>875</u>
Section 4.6 Ion Exchange	\$ 1,000 <u>875</u>
Section 4.7 Aeration	
natural draft	\$ 400 <u>350</u>
forced draft	\$ 400 <u>350</u>
spray/pressure	\$ 400 <u>350</u>
packed tower	\$ 1,000 <u>875</u>
Section 4.8 Iron and manganese	\$ 1,000 <u>875</u>
Section 4.9 Fluoridation	\$ 1,000 <u>875</u>
Section 4.10 Stabilization	\$ 600 <u>520</u>
Section 4.11 Taste and odor control	\$ 800 <u>700</u>
Section 4.12 Adsorptive media	\$ 1,000 <u>875</u>
Chapter 5 Chemical application	\$ 1,400 <u>1,220</u>
Chapter 6 Pumping facilities	\$ 1,400 <u>1,220</u>
Section 7.1 Plant storage	\$ 1,400 <u>1,220</u>
Section 7.2 Hydropneumatic tanks	\$ 600 <u>520</u>
Section 7.3 Distribution storage	\$ 1,400 <u>1,220</u>
Chapter 8 Distribution system	
per lot fee	\$ 100 <u>90</u>
non-standard specifications	\$ 600 <u>520</u>
transmission distribution (per lineal foot)	\$ 0.35 <u>0.30</u>
rural distribution system (per lineal foot)	\$ 0.04
sliplining existing mains (per lineal foot)	\$ 0.20
Chapter 9 Waste disposal	\$ 1,000 <u>875</u>
Appendix A	
new systems	\$ 400 <u>350</u>
modifications	\$ 200 <u>175</u>

(b) The fee schedule for designs requiring review for compliance with Department Circular DEQ-2 is set forth in Schedule II, as follows:

SCHEDULE II

Chapter 10 Engineering reports and facility plans	
engineering reports (minor)	\$ 400 <u>350</u>
comprehensive facility plan (major)	\$ 2,000 <u>1,750</u>
Chapter 30 Design of sewers	

per lot fee	\$ 400 <u>90</u>
non-standard specifications	\$ 600 <u>520</u>
collection system (per lineal foot)	\$ 0.35 <u>0.30</u>
sliplining existing mains (per lineal foot)	\$ 0.20
Chapter 40 Sewage pumping station	
force mains (per lineal foot)	\$ 0.35 <u>0.30</u>
1000 gpm or less	\$ 1,000 <u>875</u>
greater than 1000 gpm	\$ 2,000 <u>1,750</u>
Chapter 60 Screening grit removal	
screening devices and comminutors	\$ 600 <u>520</u>
grit removal	\$ 600 <u>520</u>
flow equalization	\$ 1,000 <u>875</u>
Chapter 70 Settling	\$ 1,500 <u>1,400</u>
Chapter 80 Sludge handling	\$ 3,000 <u>2,800</u>
Chapter 90 Biological treatment	\$ 4,700 <u>4,200</u>
nonaerated treatment ponds	\$ 1,500 <u>1,400</u>
aerated treatment ponds	\$ 2,800 <u>2,450</u>
Chapter 100 Disinfection	\$ 1,200 <u>1,120</u>
Chapter 120 Irrigation and Rapid Infiltration Systems	\$ 1,400 <u>1,220</u>
Appendices A and C (per design)	\$ 1,400 <u>1,220</u>

(c) The fee schedule for designs requiring review for compliance with Department Circular DEQ-3 is set forth in Schedule III, as follows:

SCHEDULE III

Section 3.2 Ground water	\$ 1,200 <u>1,050</u>
Chapter 6 Pump facilities	\$ 600 <u>520</u>
Chapter 7 Finished storage/hydropneumatic tanks	\$ 600 <u>520</u>
Chapter 8 Distribution system	\$ 600 <u>520</u>

(d) The fee schedule for designs requiring review for compliance with Department Circular DEQ-4 is set forth in Schedule IV, as follows:

SCHEDULE IV

Chapter 4 Pressure Dosing	\$ 400 <u>350</u>
Chapter 5 Septic Tanks	\$ 400 <u>350</u>
Chapter 6 Soil Absorption Systems	\$ 400 <u>350</u>
Chapter 6, Subchapter 6.8 ETA and ET Systems	\$ 1,000 <u>875</u>
Chapter 7, Subchapters 7.1, 7.2, and 7.3 Filters	\$ 400 <u>350</u>
Chapter 7, Subchapter 7.4 Aerobic Treatment	\$ 1,000 <u>875</u>
Chapter 7, Subchapter 7.5 Chemical	
Nutrient-Reduction Systems	\$ 1,000 <u>875</u>
Chapter 7, Subchapter 7.6 Alternate Advanced	
Treatment Systems	\$ 1,000 <u>875</u>
Chapter 8 Holding Tanks, Pit Privy, Seepage Pits,	

Waste Segregation, Experimental Systems	\$ 400 <u>350</u>
Appendix D	\$ 400 <u>350</u>
Non-degradation Review	\$ 600 <u>520</u>

(e) The fee schedule for designs requiring review for compliance with Department Circular DEQ-10 is set forth in Schedule V as follows:

SCHEDULE V	
Spring box and collection lateral	\$ 500 <u>440</u>

(f) The fee schedule for designs requiring review for compliance with Department Circular DEQ-16 is set forth in Schedule VI, as follows:

SCHEDULE VI	
Cisterns	\$ 600 <u>520</u>

(3) through (7) remain as proposed.

3. The department has amended ARM 17.36.802 and adopted New Rule I (ARM 17.36.610) as proposed but with the following changes from the original proposal, stricken matter interlined and new matter underlined:

17.36.802 FEE SCHEDULES (1) An applicant for approval under this subchapter shall pay the following fees:

(a) type of lots:	
(i) subdivision lot or parcel or townhouse	\$ 175 <u>160</u>
(ii) condominium/trailer court/recreational camping vehicle campground unit or space	\$ 70 <u>60</u>
(iii) resubmittal fee - previously approved lot, boundaries are not changed per lot or parcel	\$ 100 <u>90</u>
(b) type of water system:	
(i) individual or shared water supply system (existing and proposed) per unit	\$ 120 <u>110</u>
(ii) multiple-user system (non-public):	
(A) - each new system	\$ 440 <u>400</u> (plus \$ 450 <u>130</u> / hour for review in excess of four hours)
(B) - new distribution system design per lineal foot	\$ 0.50 <u>0.30</u>
(C) - connection to distribution system per lot or unit	\$ 400 <u>90</u>
(iii) public water system:	
(A) new system per component	per ARM 17.38.106 fee schedule
(c) type of wastewater disposal:	
(i) existing systems per unit	\$ 405 <u>90</u>

(ii) new gravity fed system per drainfield	\$ 430 <u>120</u>
(iii) new dosed system, elevated sand mound, ET systems, intermittent sand filter, ETA systems, recirculating sand filter, recirculating trickling filter, aerobic treatment unit, nutrient removal, and whole house subsurface drip irrigation systems:	
(A) per design	\$ 250 <u>240</u> (plus \$ 450 <u>130</u> / hour for review in excess of two hours)
(B) per drainfield	\$ 70 <u>60</u>
(iv) gray water reuse systems, holding tanks, sealed pit privies, unsealed pit privies, seepage pits, waste segregation, experimental systems	\$ 430 <u>120</u> (plus \$ 450 <u>130</u> / hour in excess of two hours)
(v) multiple-user wastewater system (non-public):	
(A) - new collection system design per lineal foot	\$ 0.35 <u>0.30</u>
(B) - connection to collection system per lot or unit	\$ 400 <u>90</u>
(vi) new public wastewater system per component	per ARM 17.38.106 fee schedule
(d) other:	
(i) deviation from circular per request or design	\$ 300 <u>250</u> (plus \$ 450 <u>130</u> / hour for review in excess of two hours)
(ii) waiver from rule per request	\$ 300 <u>250</u> (plus \$ 450 <u>130</u> / hour for review in excess of two hours)
(iii) reissuance of original approval statement per request	\$ 90 <u>70</u>
(iv) review of revised lot layout document per request	\$ 475 <u>160</u>
(v) municipal facilities exemption checklist (former master plan exemption) per application	\$ 450 <u>120</u>
(vi) nonsignificance determinations/categorical exemption reviews:	
(A) - individual/shared systems per drainfield	\$ 90 <u>70</u> (plus \$ 450 <u>130</u> / hour for review in excess of two hours)
(B) - multiple-user non-public systems per lot or structure	\$ 45 <u>40</u> (plus \$ 450 <u>130</u> / hour for review in excess of two hours)

(C) - source specific mixing zone per drainfield	\$ 275 <u>250</u>
(D) - public systems per drainfield	per ARM 17.38.106 fee schedule
(vii) storm drainage plan review:	
(A) - Circular DEQ-8 simple plan review per project	\$ 450 <u>130</u>
(B) - Circular DEQ-8 standard plan review:	
(I) per project	\$ 250 <u>220</u>
(II) plus per lot	\$ 60 <u>50</u> (plus \$ 450 <u>130</u> / hour for review in excess of 30 minutes per lot)
(viii) preparation of environmental assessments/environmental impact statements:	actual cost
(ix) review for compliance with ARM 17.30.718	\$ 900 (plus \$ 450 <u>130</u> / hour for review in excess of 6 hours).

NEW RULE I (17.36.610) CERTIFYING AUTHORITY UNDER 76-4-127,
MCA (1) through (1)(b) remain as proposed.
~~(c) is within a jurisdictional area covered by a growth policy pursuant to Title~~
~~76, chapter 1, MCA;~~
(d) through (2) remain as proposed.

4. The following comments were received and appear with the board and department's response:

COMMENT NO. 1: One commenter stated it supports the department's proposal to raise subdivision review fees in ARM 17.36.802. The commenter explained that it is a county contract subdivision reviewer and recognized that the current fees do not cover the cost of review.

RESPONSE: The department appreciates the comment.

COMMENT NO. 2: One commenter requested that the department eliminate the subdivision hourly rate fees in ARM 17.36.802 instead of increasing the fees as proposed. The commenter stated that the fee schedule already accounted for the complexity of subdivisions and that the hourly rate disincentivizes efficiencies within the department and unjustly places an undefinable and potentially unlimited cost on applicants. The commenter noted that ARM 17.36.805 already allows the department to assess fees if there are any changes to an application due to comments of deficiency or changes in project scope.

RESPONSE: The purpose of the hourly rate is for the department to recover review costs when extremely complex or poorly prepared submittals are received. This hourly fee is assessed very rarely. In FY19, the department charged the hourly rate for two out of approximately 500 files reviewed by the department. The

department can assess fees under ARM 17.36.805 only if there are changes to the reviewed facilities. In some cases, the proposed facilities do not change, so this fee cannot be assessed for every file.

COMMENT NO. 3: One commenter noted that the proposed fees for new water distribution systems differed between ARM 17.36.802 and 17.38.106. The commenter suggested that the department correct this discrepancy and change the fee in ARM 17.36.802 to 35 cents per lineal foot, rather than the proposed 50 cents.

RESPONSE: The department agrees with this comment and has changed the subdivision distribution fee in ARM 17.36.802 to 35 cents per lineal foot.

COMMENT NO. 4: Two commenters stated the proposed fee increase must be accompanied with a commitment from the department to improve service. One commenter stated that it is unfair for the department to ask the regulated community for a 40 percent fee increase and in return provide no more than the current level of service. The other commenter stated that the proposed fee increases should include a guarantee of timely and accurate review, not just the same level of service at an increased price.

RESPONSE: The department is committed to improving customer service irrespective of the fee increase. For instance, the department is undertaking a comprehensive rule update to clarify and consolidate rules and standards. As described in the statement of reasonable necessity, the operating costs of the department's public water and subdivision review section have exceeded current revenue, and it is necessary to increase fees to maintain program solvency. The department and board are adopting an approximate 25 percent fee increase in response to comments, as described in the response to Comment No. 5. This lower fee increase does not allow for the hiring of additional staff, but is sufficient to address immediate budget shortfalls to maintain adequate staff to conduct timely and accurate reviews.

COMMENT NO. 5: Two commenters suggested that the increased fees be phased in over time, rather than being adopted all at once. One of these commenters stated that the proposed fee increase would have an unavoidable impact on housing costs. The commenter also noted that the fees should be implemented gradually over a period of years because the increases are meant to cover the department's increased costs over time. The other commenter also stated that the proposed fee increase would contribute to growing unaffordability for home buyers. The commenter suggested that the fees be incrementally phased in, stating that incremental fee increases are more affordable for the regulated community and consumers to bear than an immediate 40 percent increase.

RESPONSE: The department and board agree that a phased-in approach would create less of a burden on the regulated community and consumers. To implement the phased-in approach suggested by the commenters, the department and board are adopting an approximate 25 percent fee increase to address immediate budget shortfalls, with the anticipation of proposing additional fee increases, as necessary, to cover future costs. The cumulative impact of the modified fee increase would be approximately 15 percent less than the impacts of

the 40 percent increase that was originally proposed.

COMMENT NO. 6: One commenter stated they understand the rationale for charging the subdivision per lot fee for townhomes but will closely scrutinize any future rule proposals to conflate townhomes with subdivision lots.

RESPONSE: The department appreciates the comment.

COMMENT NO. 7: One commenter stated that individual permittees should not bear the entire cost of subdivision review because subdivision review benefits the public in general. The commenter noted that this is a policy decision outside the scope of this rulemaking.

RESPONSE: The commenter's suggestion is outside the scope of this rulemaking, but the department appreciates the comment.

COMMENT NO. 8: One commenter objected to the statement in the statement of reasonable necessity that the department had consulted with a broad representation of stakeholders and had received no negative feedback. The commenter stated that it had expressed hesitation at the fee increases and had repeatedly stated that the organization and its members would like to review the actual proposal in detail rather than give a blanket approval to concepts introduced at informal meetings. The commenter stated that informal meetings are not a substitute for the formal process of rulemaking and that statements of the regulated community's opinion of proposed rules is an attempt to circumvent the rulemaking process and short-circuit public input.

RESPONSE: The department thanks the commenter for the comment. The department consulted with stakeholders to vet general concepts and build consensus before publishing the rule notice for the proposed rules. The statement to which the commenter objected is the department's impression of those discussions and was included to explain the particular approach taken in the rule notice. As discussed in response to Comment No. 5, the department and board have modified the proposed rules in response to the regulated community's comments.

COMMENT NO. 9: One commenter requested that the department remove the proposed requirement in New Rule I that a certifying authority be required to be within a jurisdictional area covered by a growth policy pursuant to Title 76, chapter 1, MCA. The commenter noted that some county water and sewer districts are not covered by county growth policies and that county water and sewer districts are not bound by growth policies, which are advisory in nature.

RESPONSE: The department agrees with this comment and has eliminated this requirement from New Rule I. Necessary planning will be accomplished by the utility master plan requirement. The department has renumbered the rule to account for this change.

COMMENT NO. 10: One commenter requested that the department remove storm water from the county water and sewer district certification requirements proposed in New Rule I. The commenter stated that the ability to provide adequate

water and wastewater treatment is separate from reviewing and overseeing construction plans and verifying that storm water is properly addressed. The commenter stated that the storm water requirement made it very unlikely that a county water and sewer district would become a certifying authority, and the legislative change to allow county and water sewer districts to act as certifying authorities would be of no use.

RESPONSE: The department has not modified the proposed rule in response to this comment. The requirement to review storm water facilities is necessary to comply with 76-4-127(1) and (2)(i), MCA, both of which require the certifying authority to review and approve plans to ensure adequate storm water drainage. The statutory provision would have to be amended before the commenter's proposed change could be made.

5. The effective date for the proposed rulemaking was January 1, 2020. Because the board and department did not adopt the notice of proposed rulemaking by that date, the board and department are extending the effective date to March 1, 2020, to provide additional notice to the regulated community.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ Edward Hayes

EDWARD HAYES
Rule Reviewer

BY: /s/ Christine Deveny

CHRISTINE DEVENY
Chair

DEPARTMENT OF ENVIRONMENTAL
QUALITY

BY: /s/ Shaun McGrath

SHAUN McGRATH
Director

Certified to the Secretary of State, February 4, 2020.